

BEFORE THE  
POSTAL REGULATORY COMMISSION

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ANNUAL COMPLIANCE REVIEW, 2015

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: Docket No. ACR2015  
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UNITED PARCEL SERVICE, INC.'S SECOND MOTION FOR  
ACCESS

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United Parcel Service, Inc. ("UPS") respectfully submits this motion pursuant to Commission Rule 3001.21, 3007.40, and 3007.50, seeking access under protective conditions to a limited subset of non-public materials the United States Postal Service filed with the Commission on December 29, 2015, as part of the Postal Service's Annual Compliance Report ("ACR").<sup>1</sup> The requested materials are relevant to assessing whether the Postal Service complied in 2015 with the mandate of the Postal Accountability and Enhancement Act ("PAEA") that the Postal Service's competitive products pay their own costs, without subsidy from market dominant products. See 39 U.S.C. § 3633.

UPS has previously requested, and the Commission approved, access to non-public Postal Service data in the ACR2014, RM2015-7, and the RM2016-2 dockets.<sup>2</sup> In

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<sup>1</sup> UPS is simultaneously filing a first motion for access to non-public library references that do not contain third-party information in an effort to expedite its access to these materials.

<sup>2</sup> The Commission originally granted access to selected non-public data for UPS's outside counsel and consultants in Dkt. No. ACR2014, Order No. 2321 (Jan. 15, 2015). That access was expanded to 10 additional counsel and consultants in Order No. 2326 (Jan. 16, 2015), narrowed in scope at UPS's request and extended for ninety days in Order No. 2436 (Apr. 13, 2015) ("Order 2436"), and extended for another ninety days in Order No. 2584 (July 15, 2015). In the City Carrier Street Time docket, the

Order 2756, the Commission granted UPS continued access during the pendency of the RM2016-2 docket to the non-public data to which the Commission had previously granted access in the ACR2014 and RM2015-7 dockets. Dkt. No. RM2016-2, Order 2756 (Oct. 15, 2015). UPS requests the same access, for the same outside counsel and consultants, to the following ACR2015 non-public library references:<sup>3</sup>

1. USPS-FY15-NP2 - FY 2015 International Cost and Revenue Analysis (ICRA) Report
2. USPS-FY15-NP5 - FY 2015 ICRA Overview/ Technical Description
3. USPS-FY15-NP6 - FY 2015 International Cost Segment Spreadsheets
4. USPS-FY15-NP9 - FY 2015 Miscellaneous International Data
5. USPS-FY15-NP13 - FY 2015 CRA Model (Model Files, Cost Matrices, and Reports)
6. USPS-FY15-NP14 - FY 2015 CRA “B” Workpapers
7. USPS-FY15-NP22 - City Carrier Cost System (CCCS) Documentation

The Postal Service indicated in Attachment 2 of its ACR filing that these library references contain third-party information. Dkt. No. ACR2015, FY 2015 Annual Compliance Report, Attachment 2, Appendix 2 (December 29, 2015).

UPS conferred with the Postal Service regarding this request, and the Postal Service indicated that it could not speak for third parties whose information may be included in these non-public library references, and that it could not offer its position on this motion until after consulting with these third parties after UPS filed its motion.

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Commission granted access to non-public city carrier data for these same outside counsel and consultants. Dkt. No. RM2015-7, Order No. 2363 (Feb. 24, 2015); *see also* Order No. 2455 (Apr. 23, 2015) (granting UPS’s motion for issuance of Commission Information Request and granting UPS’s motion for access to the non-public information requested).

<sup>3</sup> Specifically, UPS requests this access during the pendency of the RM2016-2 docket, just as the Commission previously approved in Order 2756.

UPS's outside counsel and consultants will continue to abide by the terms of the protective conditions they have executed regarding this data. Among other things, these protective conditions ensure that the data will not be used for any business or commercial purpose, and access will be limited to UPS's outside counsel and consultants only. Since UPS's outside counsel and consultants will use access to these materials only to analyze the *Postal Service's* compliance with § 3633, any third-party information that may be in these library references is not of interest to UPS's outside counsel and consultants.

The standards of Federal Rule of Civil Procedure 26(c) guide the Commission in determining whether and how parties should be allowed access to non-public Postal Service materials. See Dkt. No. RM2008-1, Order No. 194 at 4-6 (March 20, 2009); Dkt. No. RM2008-1, Order No. 225 at 8 (June 19, 2009); 39 C.F.R. § 3007.42. Under Rule 26(c), it is well-settled that even the most highly confidential information may be disclosed to competitors when appropriate protections are in place. In fact, such information is routinely exchanged in litigation between competitors under protective conditions, including those that limit access to the party's outside counsel and consultants. See, e.g., *U.S. Ethernet Innov. LLC v. Acer Inc.*, No. 10-CV-03724, 2014 WL 988757, at \*4 (N.D. Cal. Mar. 7, 2014) ("Intel's argument about harm by disclosure of its confidential information to its competitors is assuaged by production only on an outside counsel, attorneys' eyes only, basis.").

Third parties are also routinely ordered to produce sensitive information under protective conditions. See, e.g., *W. Conv. Stores, Inc. v. Suncor Energy (U.S.A.) Inc.*, No. 11-CV-01611, 2014 WL 561850, at \*1 (D. Colo. Feb. 13, 2014) ("During discovery,

[the third party's] interest was addressed by a protective order that entitled Western's counsel and retained experts to view [the third party's] wholesale purchase and retail sales information, but forbade the recipients of the information from sharing it with [the plaintiff's owner] . . .").

Because of the strong protective conditions to which UPS's outside counsel and consultants have voluntarily agreed (and with which they have complied for over a year), there is no legitimate interest in forbidding the access requested here. For the foregoing reasons, UPS respectfully requests that this Motion be granted.

Respectfully submitted,

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